

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. SWB-2008-4-0058
)	Mandatory Minimum Penalty
)	for
Manoucheher Benjy)	Violation of California Water Code § 13376
)	and
Beverly Hills, CA)	Order No. R4-2003-0111 (NPDES No. CAG994004)

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385 (i) is issued to Manoucheher Benjy (hereinafter Permittee) based on a finding of violation of waste discharge requirements prescribed in Order No. R4-2003-0111 (NPDES No. CAG994004, CI No. 8872).

The Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) finds the following:

1. The Permittee operated the Laurel Way Project (facility) located at 1014 Laurel Way, Beverly Hills, CA. The Permittee discharged up to 20,000 gallons per day (gpd) of groundwater generated from dewatering activities to Outfall No. 001 (Latitude 34° 05' 14", Longitude 118° 24' 54") to Ballona Creek. The groundwater was susceptible to containing pollutants, including increased levels of Settleable Solids and Total Suspended Solids (TSS), which can degrade water quality and impact beneficial uses of water, which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The groundwater flows through the drainage pipe system into Ballona Creek, a navigable water of the United States.
2. On March 10, 2005, the Executive Officer determined that the waste discharges from the Permittee's facility met the conditions to be enrolled under Board Order No. R4-2003-0111 adopted by the Regional Board on August 7, 2003 and the facility was so enrolled effective on March 10, 2005. Board Order No. R4-2003-0111 serves as General NPDES Permit No. CAG994004 (General National Pollutant Discharge Elimination System Permit and Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties).
3. Order No. R4-2003-0111 (Part E.1., page 13) and the March 10, 2005 authorization letter from the Executive Officer includes the following effluent limitations for Settleable Solids and TSS:

October 30, 2009

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Settleable Solids	mg/L	0.3	0.1
Total Suspended Solids	mg/L	150	50

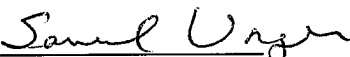
4. The violations of Order No. R4-2003-0111 were noted in the Permittee's self-monitoring report for the 2nd quarter of 2006. The violations are identified in Exhibit "A" attached hereto and incorporated herein by reference.
5. On December 9, 2008, the Executive Director of the State Water Resources Control Board (State Water Board) issued the Permittee Offer to Participate in Expedited Payment Program (EPP) No. SWB-2008-4-0058, which included a Notice of Violation notifying the Permittee of the effluent limitation violations subject to mandatory minimum penalties.
6. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
7. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
8. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC § 13385 for each day of violation is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

YOU ARE HEREBY GIVEN NOTICE THAT:

9. The Assistant Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$9,000 for the violations which occurred from May 30, 2006 through May 31, 2006. Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.
10. The Permittee may waive the right to a hearing and pay the recommended administrative civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on November 20, 2009. If the hearing is waived, a check in the amount of \$9,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on November 20, 2009.
11. If the Regional Board does not receive a waiver and full payment of the recommended penalty by November 20, 2009, the Complaint will be heard before the Regional Board or

Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.

12. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
13. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
14. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
15. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
16. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.


Samuel Unger, P. E.
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board

October 30, 2009

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. SWB-2008-4-0058

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Manoucheher Benjy (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. SWB-2008-4-0058 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ *(Check here if the Permittee waives the hearing requirement and will pay the recommended liability.)*

- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$9,000** by check that references "ACL Complaint No. SWB-2008-4-0058" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by November 20, 2009 or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Permittee to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT "A"
Effluent Limit Violations

Date	Violation Description	Pollutant Category	Serious/Chronic	Water Code Section 13385	Penalty
05/30/06	2Q06 effluent violation (05/30/06): Settleable Solids daily max (0.35 / 0.3 mg/L)	CAT1	Chronic	(i)(1)	\$3,000
05/31/06	2Q06 effluent violation (05/31/06): TSS monthly average (54/ 50 mg/L)	CAT1	Chronic	(i)(1)	\$3,000
05/31/06	2Q06 effluent violation (05/31/06): Settleable Solids monthly average (0.35/ 0.1 mg/L)	CAT1	Chronic	(i)(1)	\$3,000
				Total	\$9,000